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ABSTRACT

Commercial broadcasting seeks to maximize profit by developing a strong position in the marketplace and by attracting the audiences advertisers are likely to pay the most to reach. Broadcasting also serves many societal functions: it sells products, serves as educator and babysitter, and entertains and sedates. More people will be served by broadcasting where, as a system, it is diverse and supplies the audience with many choices. The structure of broadcasting in the United States is shaped by the regulatory environment in which it operates. Currently, this environment includes regular renewal hearings at which stations may be required to provide some indication that their operations are in the public interest. Some regulatory alternatives to current regulations now being considered would extend the terms of licenses for radio and television, loosen ownership limits, reduce content regulation, and raise license fees. An alternative proposal to use regulations and fees to increase diversity includes encouraging technology to make use of narrower bands, subsidizing socially desirable program categories, encouraging diversity in ownership, helping fund alternative program production sources, and providing guaranteed insulated funding for noncommercial broadcast stations and production centers. (TJ)

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BROADCAST REGULATION REFORM:

MANIPULATING ECONOMICS TO FURTHER THE PUBLIC INTEREST

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Commercial broadcasting in America serves a multitude of audiences and purposes. It exists to make broadcasters money, but it is more than that. Indeed, Secretary of Commerce Herbert Hoover noted:

> Radio communication is not to be considered as merely a business carried on for private gain, for private advertisement, or for entertainment of the curious. It is a public concern impressed with the public trust and to be considered primarily from the standpoint of public interest. . . .[1]

Broadcasting provides the public with information and entertainment. Serving the public and turning a profit are often two distinct functions, functions that are often at odds with each other. That being the case, it is difficult to operationally identify or define the "best" broadcast system. Yet is is presumably the "best" that is the goal of any scheme of broadcast regulation.

After a brief look at the roles and goals commercial broadcasting is expected to fulfill, attention will be turned to the regulatory structure that largely shapes broadcasting in America. Its costs and benefits, along with costs and benefits of alternative regulatory options will be examined in an effort to arrive at modifications in the regulatory structure that employs the broadcasters' profit motives to encourage public interest behavior by the broadcaster.

Broadcasting For The Broadcaster

The American system of broadcasting is primarily commercially based.[2] There is nothing inherent to broadcasting that dictates a commercially based system. Indeed, the American system is unique in its reliance on commercial support. Commercial broadcast stations are owned primarily by corporations and individuals seeking to make a profit from their investments. The licensee's profit-maximizing behavior manifests itself in several predictable directions.

Broadcasters Positioning In The Marketplace

A strong position in the marketplace is important to entrepreneurs regardless of whether or not they are in broadcasting. It is of particular significance in broadcasting because the market is and has been limited or finite. This feature is more important in broadcasting than in other markets. For example, a shoe store could double in size and choose to remain open 24 hours a day, seven days a week, without physically preempting another shoe store from opening in the same town. Because only one broadcast station may be on the air on any particular (or adjacent) frequency at any one location and time, and because the number of available frequencies is strictly limited, the existence of one broadcast station on the air precludes another. And since the broadcaster pays no "rent" for the use of the broadcast frequency, he has an incentive to use as much frequency space for as long a period as possible. It was this situation that led to the acquisition by A.M. radio licensees of co-located F.M. channels on which they so often

broadcast the same programming carried on their A.M. channel. Similarly, daytime-only A.M. stations generally seek authority to broadcast at night, low power stations seek higher power, and clear channel stations seek retentiion of their dominant frequency and power allocations. Even where there are some costs involved in increasing coverage area/time (such as the added expense of more staff, boosters and translaters, satellite equiptment, etc.), many broadcasters opt for increasing their use of the spectrum. Predictably, existing broadcasters have also opposed innovations that would result in an increase in the number of signals available to the public.[3]

Broadcasters Search For Profits

Commercial broadcasting is in the business of selling audiences to advertisers. Given channel time, location, and power restrictions, stations can increase their profits by most effectively spending their resources to get and sell the desired audience. In terms of maximizing profits, there is pressure to attract the types of audience advertisers will pay the most for with programming that costs the least per sought audience member delivered. "Normally, the largest single operating cost of any station is for salaries and wages. . . . The program department usually is the most expensive station unit in terms of salaries, wages and benefits."[4] There is economic pressure to avoid spending money on programming that doesn't maximize profits. Programs that attract small or undesired audiences cannot often be justified on a revenue generating basis. Expensive locally produced programs that attract large and desired audiences may not be as cost effective

as (and thus may be replaced by) network, syndicated, or automated programs that cost the broadcaster less to air.

As a means of reducing expenses, broadcasters may attempt to keep administrative costs to a minimum, eliminating those not related to the station's financial well being. Broadcasters who are willing to spend money collecting audience preference data, might not choose to formally ascertain the community's needs. Nor are there strong economic justifications for keeping public inspection records and files, complying with affirmative action programs, filling out increasingly complex and demanding license renewal forms, or avoiding the economies offered by joint or conglomerate ownership. Nevertheless, it can still be rational for profit-seeking broadcasters to take some actions that are less than profit maximizing if such actions increase the security of the broadcaster's license to operate.

It must also be noted that not every profit-seeking broadcaster is in the broadcast business purely to maximize profits. As with any business, broadcasting and the reasons for entering broadcasting are complex and cannot fairly be judged simply on the basis of economics.

Broadcasting For The Society

Broadcasting serves many socital functions. It helps sell products and lifestyles. It serves as a babysitter and an educator. It entertains and it sedates. Broadcasting is a mass medium capable of reaching nearly every home in America simultaneously. Never before were so many Americans able to share so many of the same man-made experiences as is possible now with broadcasting.

The notions that we use the broadcast media for so many different purposes, that there are so many different individuals with different needs/expectations of the broadcast media, and that this society is generally thought to be supportive of pluralistic interests, support the contention that broadcasting can best serve society by recognizing not only the common links among Americans, but the distinguishing factors as well, and by serving the various sub-group and individual needs. In other words, a successful broadcast system in America is a relevant communications system. Relevant in that the content of the medium fulfills the needs of the individuals attending broadcast stations. And because our needs are bound to be tempered by our backgrounds, our place in time, and our location, a diverse set of choices on broadcast stations can best meet the medium's potential to serve society. That being the case, society would be well served by a multitude of broadcast stations carrying a wide array of voices and content. If the American society supports the concept of social and cultural pluralism, broadcasting can maximize public good by providing programs relevant to large numbers of sub-populations. In addition, a broadcast system designed to carry a wide array of voices would serve society better than one carrying a more limited number of voices.

More people will be served by broadcasting where broadcasting as a system is diverse and supplies the audience with many program choices. Diversity can be justified on social-philosophical grounds. It can also be shown to be the popular choice of Americans. Diversity is what the majority of American homes are buying when given the opportunity to

subscribe to cable television, by purchasing F.M. radios to supplement their A.M. radio service, etc.

The Structure of American Commercial Broadcasting

The structure of the media has a large impact on the content of the media, and broadcasting's structure is fundamentally shaped by the regulatory environment it operates in. Regulation in America is particularly useful when it protects the public from the machinations of an imperfect marketplace and when it simulates marketplace pressures to encourage a more sensitive marketplace. Indeed, the Federal Communications Commission was established

> [f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide . . . communication service . . . .[5]

The Commission was also charged with the responsibility for "generally encourag[ing] the larger and more effective use of radio in the public interest."[6]

The 1934 Communications Act, which provides the essential framework for broadcast regulation in the U.S. today and which closely mirrored the 1927 Radio Act, established a system of non-government broadcasting which is privately owned though uses (without any ownership rights or rental fees) a limited public resource: the electromagnetic spectrum. Broadcast licenses, which are good for three years and are renewable, are allocated in such a way as to define broadcasting primarily as a local service. Licensees are responsible for what is aired

on their stations and generally have the power to grant or deny access to individuals and issues. While regulations such as the 1960 Programming Policy Statement provide some indication as to the kinds of programming the FCC deems appropriate, with the exception of the Fairness Doctrine and the "Facilities for candidates for public office" section of the Communications Act, broadcasters are free to air or exclude whatever they want. Still, broadcasters are considered public trustees and may be required to show that the operations of their stations are in the public interest.[8] The FCC does not monitor broadcast content; rather it relies on complaints from the public or other broadcasters and the broadcasters' own records to point out possible violations of Commission rules and regulations.

The American broadcast system is a complex one made up of large corporate absentee broadcasters as well as small individually-owned stations, operating in a fairly stable, but sometimes threatening environment. There are over eight thousand commercial broadcast stations, but little difference in the programming from one to another. With stations licensed to even small towns, there is much opportunity for localism, but few economic incentives to encourage it. The cost of that largely unused opportunity is the loss of the potential abundance of receivable stations.[9] While the public has limited opportunities to influence the selection of licensees and their renewals, the process is a lengthy, expensive one accompanied by little or no economic benefits.

We are left with a highly engaging mass communication system[10] grounded in two different and sometimes contrary reasons for being: profit-making and serving the public

interest. These different goals and the regulations designed to strike some balance between them can be the cause of frustration to those participating (or wishing to participate) in the American broadcast system.[11] The regulatory environment and reward system are somewhat contrived and inefficient. They structurally encourage prolonged, delayed, expensive stop-gap compromises. This need not be the case. The situation can be improved by modifying or redesigning the system to (as much as possible) structurally encourage the development of broadcasting as the society would like to define it. For the sake of examination, I suggest society's definition of the "best" broadcast system be centered around the concept of diversity,[12] and broadcasters' interests as profit maximization and stability. It might also be in society's best interest to have the consumers of the spectrum resource, the broadcasters, pay some fee for their use of the spectrum. With these considerations in mind, an examination of recent proposed broadcast regulatory changes is in order.[13]

Broadcast Regulatory Alternatives

License Terms

All of the House and Senate bills[14] would extend radio station licenses from their current three years to an "indefinite" period of time. The House bills would lengthen television license terms to five years, allow two consecutive renewals, and then make television license terms

"indefinite" as well. S. 611 would lengthen television license terms to five years; S. 622 would keep the three year term for television licenses in the largest twenty five markets, extend it to four years in markets 26-100, and five years in smaller markets. In all cases, licenses would be subject to revocation in extreme situations(as is now the case).

Unless the FCC markedly changed its record of intervention in mid-license period, broadcasters would find longer (or indefinite)licenses meaning lower regulation-related expenses and greater security. Broadcasters would be freer to take the revenue saved from admisitrative costs as additional profits or plow them back into more expensive programming. Unless the broadcaster had not already been profit maximizing by airing the most profitable programming possible, putting the saved money into programming would be counterproductive. Rather than put more money into programming, it is likely that broadcasters, feeling insulated from governemnt interference, would reduce the amount of programming that did not serve directly to maximize profits.

The public would have less opportunity than is presently the case to review licensees' renewal applications. Potential broadcasters wishing to air more diverse programming than might currently be available would have a much more

difficult time obtaining a license in the communities where all the channels are being used. The economic incentive for the broadcaster, and the diversity interests of society, do not become consonant with the advent of longer license terms.

Renewal Standards and Procedures

There are no renewal standards for radio stations in any of the bills because radio station licenses would not expire. During the ten years before television, licenses would become indefinite term licneses in the House bills, there would be no comparative hearings. The Commission would have to revoke the incumbant's license before it could consider another application for that frequency. If that were to happen, or if there were to be a vacant channel, and more than one potential licensee were to apply for that channel, the Commission would have to choose the new licensee by a process of random selection. S. 611 does not mandate any changes in the present renewal system for television except to preclude Commission consideration of media holdings of the renewal applicant. S. 622 calls for the Commission to determine whether a television license renewal applicant

> substantially met the problems, needs, and interests of the residents of its service area in its program service;

and (2) whether the operation of the station has not been characterized by serious deficiencies. If the Commission makes such findings, the renewal shall be granted."[15]

If the renewal applicant is met with a competing application, the Commission could terminate the comparative process and renew the license upon finding the incumbant has met the renewal criteria (regardless of the promises made by the challenger).

All of these revisions would increase the security of the broadcast licensee. None are designed to encourage greater diversity or access, and because diversity and access may not be in the broadcasters' best interest, they may be less likely than now to meet those concerns knowing their licenses are secure.

Ownership Limits

H.R. 13015 would have limited broadcast station owners to one station per market. H.R. 3333 allows one party to own one A.M., one F.M., and one television station in any one market. H.R. 13015 would have limited owners to a maximum of five radio stations and five television stations (of which no more than three TV stations could have been in

the top fifty markets). H.R. 3333 does not limit the number of radio stations one owner may own, and allows seven television stations (regardless of market size) per owner. The Senate bills would make no changes in the present regulations.

The removal of radio ownership limits and the loosening of television ownership limits suggested by H.R. 3333 fly in the face of diversity.

Content Regulation

All of the House and Senate bills (except S. 611) and the FCC's Notice of Inquiry on deregulation of radio, appear to remove some or most program regulation facing broadcasters. The result would be less Commission-directed paperwork for the licensees. In addition there would be less leverage for citizen groups (or other non-broadcasters) to use in order to get access to the broadcast media or less profitable programming aired. License challengers would have less to base their challenges on.

Deregulating broadcasting would make the jobs of the Commission and broadcasters easier, but would do nothing to promote or ensure broadcast diversity or easier access.

Licensee Fees

Each of the bills provides for fees to be collected from

broadcasters. The House bills would attempt to incorporate into these fees a function of what the use of the public spectrum would be worth. The Senate bills would base fees on the cost of regulating broadcasters.

The addition of substantial fees, in and of themselves, would run counter to broadcasters' attempts to profit maximize. While H.R. 13015 would have used part of the revenue from the fees to support public broadcasting, rural and minority owned telecommunicatinn systems, and thus could be considered to aid diversity and access, none of the more recent bills earmark the fee revenue for specific uses (other than paying for the cost of regulation). Such general and undirected fees would not, in and of themselves, further the social goals relating to broadcasting.

A Proposal

A major problem with the existing and proposed broadcast regulations is that broadcasters, in order to meet society's goals, often have to do the antithesis of what they would normally do to profit maximize. This need not always be the case. There are ways to regulate broadcasting so that it will be in the broadcasters' economic interest to support behaviors that will lead to greater diversity.

Assuming an equitable base spectrum fee could be devised to reflect the value of the spectrum space each broadcaster uses, it is possible to build into that fee a flexibility designed to recognize and encourage socially desirable behavior on the part of the broadcasters. Examples of such fee structure components are discussed below.

(a) Fees could be based, at least in part, on the percentage of local usable spectrum space a broadcaster uses. This would provide an economic incentive for broadcasters to encourage and use technology that would make it possible for them to broadcast using narrower bands of the spectrum thus resulting in more frequencies being available for broadcast use.

Presently, most broadcasters have a stong economic incentive to use as much of the spectrum as they can. The wider their spectrum band, the less precise (and perhaps less expensive) their transmitting equipment must be, and more importantly, the less room there is for competition from additional spectrum users. Along the same lines, with a percent-of-spectrum used fee, there would suddenly be some incentive for existing broadcasters to support (or at least be less likely to oppose) research and development

efforts designed to find ways of making heretofor unusable portions of the spectrum usable for broadcasting. Given such a fee structure, broadcasters might well, for the first time, be in the position of favoring policies that would tend to increase the number of broadcast outlets. Inasmuch as policy-making is a political process, support by the regulated industry would do much to enhance the prospects of pro-competitive policies seeing fruition.[16] Additional competition could do much to give the public(s) more programming alternatives thereby satisfying diverse audience tastes without the FCC having to impose cumbersome programming regulations that might begin to impinge on the First Amendment.

(b) If a particular type of particularly expensive (or less profitable) program category was deemed to be socially desirable, the spectrum fee for an individual broadcaster could decrease as the amount of such programing increased (measured in airtime or revenue spent on such programming). The broadcaster would ultimately have the choice to take advantage of the incentive or not. Such a scheme would make socially desirable programming that might normally be less profitable than the lowest common denominator mass appeal network/syndicated programming more economically competitive. A similar formula might be established to encourage a programming

type that is deficient in a particular market. If there were no classical or jazz music programs on radio stations in a particular market, for example (presumably because other formats or programs would be more profitable), the first broadcaster to air such programming could get a reduction in the spectrum fee which would offset the lower profits such programming would produce. (Note that the formula does not presume any one type of program is inherently better or more socially desirable than another, it is simply designed to encourage diversity.)

(c) To encourage diversity in the ownership and control of broadcast outlets available to listeners, stations agreeing to share time on one frequency could get significant fee reductions (regardless of what the licensee did on the air).

While each of the fee structures mentioned here operate differently, each is administratively possible and could (in combination with others or not) substantially contribute to broadcast diversity and enhance the broadcast marketplace, thereby having a secondary effect of lessening the need for FCC programming regulation.

Using the Spectrum Fee Revenues

Broadcast spectrum fee revenue could be used to support

diversity. In that way, not only could the fee structure be desigened to encourage diversity, but the revenues could also be used to support public welfare in line with the overall goal of diversity. While it would be important that the fee revenues not be split so many ways as to become incapable of making any major contributions, the fee revenues might go to support any or all of the following types of endeavors.

(a) Support research attempts to support the technical capability to use the spectrum more efficiently (by allowing smaller band widths for individual stations, increasing the range of usable spectrum, more accurately directionalizing broadcast signals, etc.). More efficient use of the spectrum might lead to more stations being available to listeners, and more stations being available in the marketplace would tend to enhance the pressure for program diversity.

(b) Lower interconnect transmission rates particularly for regional or specialized networks either with subsidies or by helping to develop technology that would lend itself to lower transmission costs. Additional ease in specialized networking would make it more feasible to do and distribute limited appeal programming profitably.

(c) Help fund alternative programming production sources. This might be accomplished by making available low-interest

loans to burgeoning production houses or through arts grants administered by an national endowment council. A condition of such a loan or grant could be that the resulting program be either a non-profit venture (which would be sold to stations or sponsors at a low cost) or a sustaining program (given free to stations which would not be permitted to insert commercial adversitements in the programs thereby avoiding the pressure to do programming that meets advertisers' needs).

(d) Help fund diversificatinn of broadcast station ownership and management. Women, minority, non-media owners, or other such groups could qualify to receive low-interest loans/grants for the purchase of a single broadcast outlet. Funds might similarly be made available to help support management training programs or scholarships to help those traditionally excluded from management positions to receive the training necessary to successfully move into management.

(e) Non-commercial broadcast stations, production centers, and/or distibution functinns could benefit from the fee revenues, which could serve as the guaranteed insulated funding public broadcasting has been lacking. Both the number and quality of stations and programs could increase as a result of such financial help, and because non-commercial broadcasting should not have to concern

itself with pleasing advertisers or drawing large audiences of the type advertisers find desirable, programming could be innovative, experimental, and different from that offered on commercial stations.

(f) Finally, when license or spectrum fees have been discussed or considered in the past, those in government considering the issue have generally suggested using all or most of the fee revenues to pay for the expense of regulating broadcasting (i.e., pay for the FCC in full or in part). While such a use of the revenue might be politically sagacious, it would do nothing to foster the goal of diversity. Due to the high costs involved in broadcasting (particularly television), spending any of the fee revenue to support the FCC rather than to support the types of things discussed here would be tantamount to abandoning the concept of using the fee structure and revenues to seriously encourage broadcast diversity.

Comments

It is not difficult to foresee some objections being made to the market-manipulating fee structures suggested in this proposal. Some critics may suggest that such fee formulae would inhibit broadcasters' freedoms. This is a falacious argument. None of the structures requires broadcasters to do anything different than they might otherwise do. All encourage

and recognize broadcasters' efforts at profit maximization. The existing structure of broadcasting, as set up by the government, is far from a free or competitive market, nor is it generally open for entry by new participants. In the present system (with the limited number of channels available), broadcasters have a government-sanctioned economic incentive -- albeit perhaps an unintentional one -- to air mass appeal lowest common denominator programming. The fee structures discussed here would merely modify the existing artificially imposed economic incentives to encourage greater diversity while giving the broadcaster more freedom to run his business as he sees fit.

Broadcasters should pay for the spectrum resource they use. It is important that whatever form of payment is adopted, its structure and revenues be used to further encourage a more full and satisfying broadcast system for the American people.

FOOTNOTES

[1]U.S. Congress. House of Representatives. Committee on Merchant Marine and Fisheries. Regulation of Radio Communication. Hearings on H.R. 7357. 68th Cong., p.10.

[2]As of August 31, 1979, 7630 of 8613 radio stations, and 732 of 982 television stations licensed in the U.S. were commercial stations. "for the record," Broadcasting, October 22, 1979, p. 71.

[3]Television broadcasters have generally opposed the importation of distant signals into their communities via cable television, as well as the suggestion that new television channels might be allocated to their area.

[4]Ward L. Quaal and James A. Brown, Broadcast Management, (2d. ed.; New York: Hastings House, 1976) p. 270.

[5]U.S., Communications Act of 1934, Public Law 416, 73d Cong., June 19, 1934, Title I, Sec. 1.

[6]Id., Title III, Sec. 303 (g).

[7]F.C.C., "Report and Statement of Policy re. Commission en banc Programming Inquiry," 44 FCC 2303 (1960).

[8]This is not necessarily an easy task. Operationally, the public interest can be considered to be represented by court and Commission rules and findings. Title 47 of the Code of Federal Regulations, which includes the Commission's regulations pertaining to telecommunications, has significantly grown in size in recent years. Note that in Citizens Committee to Save WEFM v. FCC, 506 F. 2d. 246 (DCC reh. en banc, 1974), the U.S. Court of Appeals equated "diversity" with "serving the public interest because it serves more of the public" and thus must be considered by the FCC in making its public interest findings.

[9]See: Roger G. Noll, Merton J. Peck, and John J. McGowan, Economic Aspects of Television Regulation (Washington, D.C.: Brookings Institution, 1973), Chapter 4.

[10]The average American home has the television set turned on for over six hours a day. Nearly every American home has radio and television sets. "a short course in broadcasting - 1979,) Broadcasting Yearbook 1979 (Wahington, D.C.: Broadcasting Publications, 1979), p. A-2.

[11]It isn't even clear who broadcasters are legally obligated to serve first, their owners or the public. Media critic Harry Skornia notes that courts have held that a "business corporation, created to operate for profit, must serve its stockholders first and the public only secondarily." Harry J. Skornia, Television and Society (New York: McGraw Hill, 1965), p. 18. On the other hand, broadcasters are obligated to air opposing sides of

controversial issues they present regardless of the ability or willingness of anyone to pay for that time. See: Cullman Broadcasting Co., 40 FCC 516 (1963).

[12]Diversity as a goal has been espoused often. This could include both the listeners' ability to select from many diverse choices and/or the ability of diverse groups to get access to the air to "speak." See note 8, supra.

[13]In addition to general comments and observations, proposed broadcast regulations being discussed will be those introduced in" H.R. 13015, 95th Cong., 2d Sess. (1978); H.R. 3333, 96th Cong., 1st Sess. (1979); S. 611, 96th Cong., 1st Sess. (1979), S. 622, 96th Cong., 1st Sess. (1979), and FCC, "Notice of Inquiry and Proposed Rulemaking; Deregulation of Radio," 44 Fed. Reg. 57,636 - 57,723 (1979).

[14]See note 13, supra.

[15]S. 622, Sec. 312 (c), note 13, supra.

[16]For an excellent discussion of broadcast policymaking, see: Erwin G. Krasnow and Lawrence D. Longley, The Politics of Broadcast Regulation (2d. ed.; New York: St. Martin's Press, 1978).